



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
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Matthew J. Strickler
Secretary of Natural Resources

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James Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ROCK WOOD PRODUCTS OF DILLWYN INC.
FOR
PIERCE AND JOHNSON LUMBER COMPANY
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT VAR10
REGISTRATION NO. VAR10H310**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Rock Wood Products of Dillwyn Inc., regarding the Pierce and Johnson Lumber Company, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. “2019 Permit” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
4. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. “Construction activity” means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
6. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. “Discharge” means the discharge of a pollutant.
9. “Discharge of a pollutant” means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
10. “EPA” means the United States Environmental Protection Agency.
11. “Facility” or “Site” means the Pierce and Johnson Lumber Company located at 19135 North James Madison Highway, Dillwyn, Virginia, from which discharges of stormwater associated with construction activity occur.
12. “General Permit Regulation” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
13. “Land disturbance” or “land-disturbing activity” means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.

14. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
15. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
16. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . .” 9 VAC 25-870-10.
17. “Pollution” means “such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are ‘pollution.’” Va. Code § 62.1-44.3.
18. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
19. “Registration Statement” means a registration statement for coverage under the 2014 Permit.
20. “Rock Wood” means Rock Wood Products of Dillwyn, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Rock Wood is a “person” within the meaning of Va. Code § 62.1-44.3.
21. “Runoff volume” means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
22. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
23. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

24. “Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
25. “Stormwater management plan” means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
26. “SWPPP” means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
27. “TMDL” means total maximum daily load.
28. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
29. “Va. Code” means the Code of Virginia (1950), as amended.
30. “VAC” means the Virginia Administrative Code.
31. “VPDES” means Virginia Pollutant Discharge Elimination System.
32. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
33. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate

natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.

34. “VSMP authority permit” means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of State Permit coverage has been provided where applicable. Va. Code § 62.1-44.15:24.
35. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Rock Wood owns the Facility located in Buckingham County, Virginia, from which stormwater associated with construction activity is discharged.
2. The Department is the VSMP authority for the Site.
3. Rock Wood applied for and, on July 24, 2017, was granted coverage under the 2014 General VPDES Permit for Discharges of Stormwater Associated with Construction Activities (VAR10). Rock Wood was assigned registration number VAR10H310. On March 25, 2020, Rock Wood was reissued coverage under the 2019 Permit.
4. The 2014 Permit allowed and the 2019 Permit allows Rock Wood to discharge stormwater associated with construction activities from the Site to Joshua Creek, in strict compliance with the terms and conditions of the 2014 Permit.
5. Joshua Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
6. Joshua Creek is located in the James River Basin (Middle). During the 2018 305(b)/303(d) Water Quality Assessment Integrated Report, Joshua Creek was not assessed for any designated use; therefore, the stream is considered a Category 3A waterbody. The Site is located within the study area for the James River (Slate River) Bacterial TMDL (EPA approval September 20, 2007, State Water Control Board approval July 31, 2008). The discharge was not addressed.
7. The Site is also located in the Chesapeake Bay watershed. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation (SAV) criteria in the Chesapeake Bay and its tidal tributaries. Joshua Creek is intermittent at the Site and should therefore be considered a Tier 1 water.

8. Department inspections were conducted on the Site on September 24, 2018, November 14, of 2018, and January 16, 2019.
9. During Department inspections conducted on September 24, 2018, November 14, 2018 and January 16, 2019, DEQ staff observed that a copy of the notice of coverage letter and contact information for the public to view the SWPPP was not posted at or near the main entrance of the Site.
10. 2014 Permit Part II(C) states in part: "Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity...The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F."
11. 9 VAC 25-870-54(G) states in part: "The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site."
12. 2014 Permit Part II (A)(1)(b) states : " Upon receipt, a copy of the notice of coverage under the VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter)."
13. During Department inspections conducted of the Site on September 24, 2018, November 14, 2018, and January 16, 2019, DEQ staff observed that the SWPPP did not contain the registration statement.
14. 2014 Permit Part II (A)(1)(a) states: "Stormwater pollution plan contents. The SWPPP shall include the following items: 1. General Information. A. A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities."
15. During Department inspections of the Site on September 24, 2018, November 14, 2018, and January 16, 2019, DEQ staff observed that the SWPPP did not identify a delegation of authority.
16. 2014 Permit Part II(A)(7) states: "Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP."
17. During Department inspections of the Site on September 24, 2018, November 14, 2018, and January 16, 2019, DEQ staff observed that the SWPPP was not signed and did not contain updates, amendments, or modifications that were conducted on Site.
18. 2014 Permit Part II (B)(1) states; " The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect

on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP."

19. 2014 Permit Part II.B.4.a states: "The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. a record of dates when: (1) Major grading activities occur; (2) construction activities temporarily or permanently cease on a portion of the site; and (3) stabilization measures are initiated."
20. 2014 Permit Part II (A)(8) states: "SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K."
21. 9 VAC 25-870-54(G) states in part: "The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP..." See Also 2014 Permit Part II (B) (1) above.
22. During Department inspections of the Site on the September 24, 2018 and November 14, 2018, DEQ staff observed the on-site sediment basin below the parking lot, was not stabilized and showed erosion along its banks.
23. 9 VAC 25-840-40. 1 states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."
24. 9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."
25. 2014 Permit Part II (E)(1) states in part: "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."
26. During Department inspections of the Site on September 24, 2018, November 14, 2018, and January 16, 2019, DEQ staff observed sediment was passing through, around, and over a damaged unmaintained silt fence at the Site. DEQ staff observed sediment deposition accumulating past the on-site sediment basin outfall protection.
27. 9 VAC 25-840-60 A. states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

28. 9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implanted during construction activities."
29. 2014 Permit Part II (E) (1) states: "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II F identifies a control measure that is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."
30. The Department issued NOV No. 2019-01-PRO-203 to Rock Wood on February 22, 2019, citing it for the violations listed above,
31. The Department has not issued coverage under any permit or certificate to Rock Wood other than under the 2014 Permit and 2019 Permit.
32. Based on the results of the Department inspections of the Site on September 24, 2018, November 14 2018, and January 16, 2019, the Board concludes that Rock Wood violated 2014 Permit Parts II(C), II (D)(2), II (A)(1)(a), II (A)(1)(b), II(A)(7), II (B)(l), II B(4), II (A)(8), II E(1) and 9 VAC 25-870-54(G), 9 VAC 25-840-40.1, 9 VAC 25-840-60 A, 9 VAC 25-870-54(B), as described in paragraphs C8-C29 of this Order.
33. On February 25, 2020, Department staff met with representatives of Rock Wood at the Site to discuss the violations. The Department verified that most of the violations as described in Section C, above, have been corrected.
34. In order for Rock Wood to return to compliance, DEQ staff and Rock Wood have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Rock Wood, and Rock Wood agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$17,745 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Rock Wood shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Rock Wood shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Rock Wood for good cause shown by Rock Wood, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2019-01-PRO-203 dated February 22, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Rock Wood admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rock Wood consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rock Wood declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Rock Wood to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Rock Wood shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Rock Wood shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rock Wood shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Rock Wood. Nevertheless, Rock Wood agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Rock Wood has completed all of the requirements of the Order;
- b. Rock Wood petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Rock Wood.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rock Wood from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Rock Wood and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Rock Wood certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Rock Wood to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rock Wood.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Rock Wood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of October, 2020.



James J. Golden, Regional Director
Department of Environmental Quality

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Rock Wood Products of Dillwyn Inc. voluntarily agrees to the issuance of this Order.

Date: 8/3/2020 By: [Signature], Safety Director
(Person) (Title)
Rock Wood Products of Dillwyn Inc.

Commonwealth of ~~Virginia~~ Pennsylvania
City/County of Cockeysville, Chester

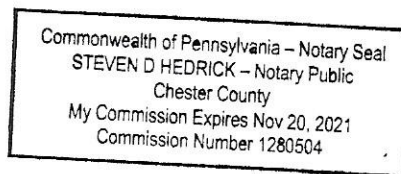
The foregoing document was signed and acknowledged before me this 3rd day of
August, 2020, by Edward Healy who is

Safety Director of Rock Wood Products of Dillwyn Inc., on behalf of the
corporation.

[Signature]
Notary Public
1280504
Registration No.

My commission expires: Nov. 20, 2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Rock Wood shall immediately post a conspicuous copy of the notice of coverage letter near the main entrance of the construction activity.
2. SWPPP
 - a. Within 30 days of the issuance of this Order, Rock Wood shall update the SWPPP in accordance with the requirements of Part II of the 2019 Permit and shall submit a copy of the SWPPP to DEQ for review and approval. One SWPPP copy shall be kept on site for everyday use.
 - b. Rock Wood shall respond to any DEQ comments regarding its SWPPP within five business days from the date of the DEQ comments.
 - c. Rock Wood shall respond to any DEQ comments regarding any amended SWPPP within five business days from the date of the DEQ comments.
 - d. Upon DEQ approval, Rock Wood shall immediately implement the approved SWPPP and any approved amended SWPPP.
 - e. Rock Wood shall maintain the SWPPP in a central onsite location. If the main entrance is not the central location, then Rock Wood shall also post the SWPPP's location or a second copy at the main entrance.
3. Within 30 days of the issuance of this Order, Rock Wood shall stabilize the on-site sediment basin below the parking lot.
4. DEQ Contact

Unless otherwise specified in this Order, Rock Wood shall submit all requirements of Appendix A of this Order to:

**Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov**